

1 **JOHN S. CHA, ESQ. (SBN 129115)**

2 jcha@raineslaw.com

3 **STEVEN T. GEBELIN (SBN 261507)**

4 sgebelin@raineslaw.com

5 **RAINES FELDMAN LLP**

6 9720 Wilshire Boulevard, 5th Floor

7 Beverly Hills, California 90212

8 Telephone: (310) 440-4100

9 Facsimile: (424) 239-1613

10 Attorneys for Defendants JOSEPH "JOEY"

11 TRAVOLTA, d/b/a INCLUSION FILMS,

12 INCLUSION WEAR, LLC, and LITTLE

13 DOCUMENTARY FILMS, LLC.

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ALISA WOLF, *et al.*

17 Plaintiffs,

18 v.

19 JOSEPH "JOEY" TRAVOLTA, *et al.*

20 Defendants.

CASE NO. 14-CV-00938-CAS (PJWx)

[Hon. Christina A. Snyder]

[Courtroom 5-2nd Floor]

Action Filed: February 6, 2014

4AC Filed: August 5, 2015

Trial Date: February 9, 2016

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT**

DATE: January 11, 2016

TIME: 10:00 A.M.

DEPT.: Court Room 5

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 11, 2016, at 10:00 a.m., or as soon thereafter as this matter may be heard in the Courtroom of the Honorable Christina A. Snyder, Courtroom Number 5, United States District Court for the Central District of California, Western Division, Spring Street Federal Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Defendants JOSEPH “JOEY” TRAVOLTA, d/b/a INCLUSION FILMS, INCLUSION WEAR, LLC, and LITTLE DOCUMENTARY FILMS, LLC (collectively “Defendants”), will and hereby do move this Court for an order granting summary judgment in favor of Defendants and against Plaintiffs ALISA WOLF and ACTORS FOR AUTISM (“Plaintiffs”) pursuant to Fed. R. Civ. P. 56 and Local Civil Rule 56-1.

Defendants bring this motion on the grounds that they are entitled to complete summary judgment on all state law claims brought by Plaintiffs and partial summary judgment on Plaintiff Wolf’s copyright claims in this action because the statute of limitation for all such claims have run. Plaintiffs were made aware of their claims and had reasonable suspicion to believe they had been allegedly harmed by Defendants in 2006 and 2007 in connection with the taking of program design materials and/or related business opportunities, such that any claims arising out of the alleged copying of Plaintiff’s registered work pre-dating the limitations period are barred.

Defendants also bring this motion on the grounds that Plaintiff’s registered works lack originality. Plaintiff has copied (plagiarized) significant portions of the works registered with the Copyright Office from third parties such that she cannot assert claims of infringement based on any alleged copying of those works.

Defendants’ motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, Defendants’ Local Rule 56-1 Statement of Uncontroverted Facts and Conclusions of Law (“SUF”), the Declarations of Steven T. Gebelin, Joey Travolta, and Kelly Palmer, all exhibits attached thereto, the

1 pleadings and orders on file in this action, and such further facts and argument as
2 may be presented prior to or at the hearing.

3 Pursuant to Local Civil Rule 7-3, this motion is made following the
4 conference of counsel on July 23, 2015, regarding the statute of limitations and the
5 parties' meet and confer correspondence regarding originality on or about
6 September 10 and 16, 2015.

7
8 Dated: December 11, 2015

Respectfully submitted,

9 **RAINES FELDMAN LLP**

10
11 By: 

12 JOHN S. CHA
13 STEVEN T. GEBELIN
14 Attorneys for Defendants
15 JOSEPH "JOEY" TRAVOLTA, d/b/a
16 INCLUSION FILMS, INCLUSION WEAR,
17 LLC, and LITTLE DOCUMENTARY
18 FILMS, LLC
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	Introduction.	1
II.	Factual Background.....	2
	A. Plaintiffs’ Knowledge of “Wrongdoing” By Travolta in 2006 and 2007.	2
	B. Wolf’s Copying of Third Party Material into the Works.	5
	1. The Work Registered in 2006.	5
	2. The Work Registered in 2015.	6
III.	Legal Standard.....	7
IV.	Argument.....	8
	A. Statutes of Limitations.....	8
	1. Any Damages Under Wolf’s Copyright Claim are Limited to the 3 Years Prior to Filing.	11
	2. Plaintiffs’ State Law Claims are all in Violation of the Applicable Statutes of Limitation.	12
	B. Lack of Originality.....	14
V.	Conclusion.....	16

TABLE OF AUTHORITIES

Cases

<i>Alfred Bell & Co. v. Catalda Fine Arts,</i>	
191 F.2d 99, 102–03 (2d Cir.1951).....	14
<i>AmerUS Life Ins. Co. v. Bank of America, N.A.,</i>	
143 Cal. App. 4th 631, 639 (2006).....	11
<i>Anderson v. Liberty Lobby, Inc.,</i>	
477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)	7, 8, 10
<i>Bono v. Clark,</i>	
103 Cal. App. 4th 1409, 1433 (2002).....	11
<i>Cadence Design Systems, Inc. v. Avanti Corp.,</i>	
29 Cal. 4th 215, 227 (2002).....	10
<i>Celotex Corp. v. Catrett,</i>	
477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)	7, 8
<i>Coy v. County of Los Angeles,</i>	
235 CA3d 1077, 1087 (1991).....	11
<i>David Welch Co. v. Erskine & Tulley,</i>	
203 Cal. App. 3d 884, 893 (1988).....	10
<i>Eden Toys, Inc. v. Florelee Undergarment Co.,</i>	
697 F.2d 27, 34 n. 6 (2d Cir.1982).....	15
<i>Edwards v. Fresno Comm. Hosp.</i>	
38 CA3d 702, 706, 113 CR 579, 581-582 (1974)	9
<i>Entm't Research Group, Inc. v. Genesis Creative Group, Inc.,</i>	
122 F.3d 1211, 1217 (9th Cir.1997).....	14, 15
<i>Fox v. Ethicon Endo-Surgery, Inc.,</i>	
35 Cal. 4th 797, 806 (2005).....	8, 9
<i>Glue-Fold, Inc. v. Slautterback Corp.,</i>	
82 Cal App. 4th 1018, 1024 (2000).....	10

1	<i>Gutierrez v. Mofid,</i>	
2	39 Cal.3d 892, 897–98, 218 Cal.Rptr. 313, 705 P.2d 886 (1985).....	11
3	<i>Hatch v. Collins,</i>	
4	225 Cal. App. 3d 1104, 1111(1990).....	10
5	<i>Knoell v. Petrovich,</i>	
6	76 CA4th 164, 168, 90 CR2d 162, 164 (1999)	9
7	<i>Lamps Plus, Inc. v. Seattle Lighting Fixture Co.,</i>	
8	345 F.3d 1140, 1145-46 (9th Cir. 2003)	15
9	<i>Makedwde Publ'g Co. v. Johnson,</i>	
10	37 F.3d 180, 181 (5th Cir.1994).....	11
11	<i>McFaddin v. H. S. Crocker Co., Inc.,</i>	
12	219 CA2d 585, 591, 33 CR 389, 393 (1963)	9
13	<i>N. Coast Indus. v. Jason Maxwell, Inc.,</i>	
14	972 F.2d 1031, 1033 (9th Cir.1992).....	14
15	<i>Neel v. Magana, Olney, Levy, Cathcart & Gelfand</i>	
16	6 C3d 176, 182, 98 CR 837, 840 (1971)	11
17	<i>Newsom v. Countrywide Home Loans, Inc.,</i>	
18	714 F.Supp.2d 1000, 1014 (ND Cal. 2010)	9
19	<i>Pickett v. Prince,</i>	
20	207 F.3d 402 (7th Cir.2000).....	15
21	<i>Roley v. New World Pictures, Ltd.,</i>	
22	19 F.3d 479, 481 (9th Cir.1994).....	11, 12
23	<i>Satava v. Lowry,</i>	
24	323 F.3d 805, 810 (9th Cir.2003).....	14
25	<i>Silvas v. E*Trade Mortg. Corp.</i>	
26	514 F3d 1001, 1007, fn. 3 (9th Cir. 2008)	9
27	<i>Sobhani v. @Radical.Media Inc.,</i>	
28	257 F. Supp. 2d 1234, 1239-41 (C.D. Cal. 2003)	15

1	<i>Soremekun v. Thrifty Payless, Inc.,</i>	
2	509 F.3d 978, 984 (9th Cir.2007).....	8
3	<i>Stalberg v. Western Title Ins. Co.,</i>	
4	230 Cal. App. 3d 1223, 1230 (1991).....	10
5	<i>Stone v. Williams,</i>	
6	970 F.2d 1043, 1049–50 (2d Cir.1992).....	12
7	<i>Thomson v. Canyon,</i>	
8	198 CA4th 594, 606 (2011).....	10
9	<i>U.S. Auto Parts Network, Inc. v. Parts Geek, LLC,</i>	
10	692 F.3d 1009, 1016 (9th Cir. 2012).....	15
11	<i>United States v. Hamilton,</i>	
12	583 F.2d 448, 451 (9th Cir.1978).....	14
13	<i>Wisper Corp. N.V. v. California Commerce Bank,</i>	
14	49 CA4th 948, 957 (1996).....	11
15	<u>Statutes</u>	
16	17 U.S.C. § 102	14
17	17 U.S.C. § 103(b)	15
18	17 U.S.C. § 507(b)	11
19	Cal. Bus. & Prof. C. § 17208	9
20	Cal. Bus. & Prof. Code § 17200.....	9
21	Cal. Civil Code § 3426.6.....	10
22	Cal. Code Civ. Proc., § 312.....	8
23	Cal. Code of Civil Procedure § 338(c)	10
24	California Code of Civil Procedure section 339	9, 11
25	California Code of Civil Procedure section 343	10
26	<u>Rules</u>	
27	Fed. R. Civ. P. 56(c).....	7
28		

1	<u>Other Authorities</u>	
2	1–3 Nimmer on Copyright § 3.06 (2002).....	15
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. Introduction.**

2 Plaintiffs Alisa Wolf and her organization Actors for Autism allege that
 3 Defendants Joseph “Joey” Travolta and his companies, Inclusion Wear LLC and
 4 Little Documentary Films, LLC, have infringed her copyrights in two versions of a
 5 “program service design” for a vocational practical film school for autistic young
 6 adults, based on copying allegedly first occurring in 2006 and 2007. Based on the
 7 alleged infringement, Plaintiffs also allege that Defendants have committed various
 8 other state law business torts against Plaintiffs by using the allegedly copied
 9 materials and related business opportunities.

10 However, Plaintiffs were well aware of their claims against Defendants in
 11 2006. Wolf drafted the documents in collaboration with Travolta, receiving edits
 12 and input on how to document his long gestating idea for a practical film school.
 13 After Wolf and Travolta stopped working together, Plaintiffs registered one of the
 14 works, complained to the regional center that contracted with Travolta rather than
 15 Plaintiffs, sought the advice of an attorney, and eventually decided to forgo their
 16 claims and pursue other opportunities with the regional center. Having waited
 17 nearly eight years to file claims based on this conduct, Plaintiffs can no longer
 18 maintain any claims save for infringement occurring within the three years prior to
 19 the filing of the suit.

20 In addition a time bar against the majority of Plaintiffs’ claims, the passage of
 21 time eroded some, but not all, of the evidence that the works claimed by Wolf are
 22 not original enough to qualify for copyright protection. Despite adamantly claiming
 23 that all of the words in the works were solely her own, Wolf actually “cut and
 24 pasted” significant portions of the works from third party documents on the internet,
 25 and this unauthorized derivation pervades the work. As a result, the portion of the
 26 copyright claims not barred by the statute of limitation are invalid - Wolf cannot
 27 seek to enforce copyright protection of works that she largely did not actually create.
 28

1 Defendants are entitled to summary judgment on all of Plaintiffs' claims.

2 **II. Factual Background.**

3 A. Plaintiffs' Knowledge of "Wrongdoing" By Travolta in 2006 and 2007.

4 Over a decade ago, Plaintiff Alisa Wolf met Defendant Joseph "Joey"
5 Travolta after she read an August 2003 newspaper article that described Travolta's
6 film classes and his prior work with disabled children. Statement of Undisputed
7 Facts ("SUF") 1. At the time, Travolta was running acting classes, filmmaking
8 camps and filmmaking classes at his branch of The Entertainment Experience.
9 After that meeting, Plaintiff and Defendant worked together to incorporate autistic
10 children, like Wolf's son, into Travolta's acting programs. SUF 2. In early June
11 2004, Wolf started working for Travolta at the Entertainment Experience in the
12 disabilities division and continued until August 2006. As this relationship
13 progressed, Travolta aided Wolf in setting up her own charitable organization, co-
14 Plaintiff Actors for Autism in 2005. SUF 3. In late 2005, Wolf and Travolta
15 attended a meeting with the Lanterman Regional Center regarding whether the
16 center would authorize payments to ("vendorize") AFA's own acting classes for
17 autistic children. SUF 4. During that meeting, the representatives from the center
18 asked for programs directed at teaching vocational skills to adults, and Travolta
19 responded by proposing the use of his long gestating idea for a practical film school
20 for the center's clients. SUF 5. In the subsequent months, Travolta instructed Wolf
21 on putting together documentation for his idea to submit to the center, reviewed and
22 edited such documentation that she prepared, obtained a \$10,000 per student
23 commitment for the program from the regional center, and made efforts directed at
24 obtaining a slate of films for production that would serve as the backbone for the
25 program. SUF 6-8.

26 Despite initially working on the program together, Travolta and Wolf ended
27 their professional collaboration in summer of 2006, with Travolta resigning his
28 position with AFA and moving out of the offices and performance space that he had

1 let AFA use for free. SUF 9. Wolf typed Travolta's resignation letter to AFA, and
2 registered one of the two works at issue in this case with the U.S. Copyright office
3 shortly thereafter. SUF 10-11. In the meantime, Travolta continued to work with
4 the regional center to establish and begin providing services to adults through his
5 practical film school program, eventually leading to his vendorization for a practical
6 film making vocational program. SUF 12. It was in August 2003 that Travolta first
7 articulated his "practical film school" program. SUF 1.

8 During the same time, Plaintiffs sent a September 2006 letter submitting their
9 own written application to the regional center to establish a competing vocational
10 filmmaking program for adults. SUF 13. In response, Plaintiffs were informed by a
11 December 28, 2006, letter that the regional center was already working on a
12 "program identical" (by Travolta) to the one proposed and submitted by Plaintiffs
13 and, due to limited demand, Plaintiffs would not be considered for providing the
14 same service. SUF 14. Plaintiff Wolf then "suspected Defendant Travolta had
15 merely changed the cover sheet to [her claimed] program design." *Id.* Prior to
16 receiving this letter, by December 4, 2006, Plaintiffs had sought counsel from an
17 attorney on possible claims in a lawsuit against Travolta for "taking the program"
18 but it "was decided by the board of directors to not pursue a law suit at this time,
19 rather to write a different program to submit to the regional center," despite Wolf
20 believing that "it seemed clear that Defendant Travolta was using the program."
21 SUF 15.

22 Despite this decision, Plaintiffs still wrote an appeal letter to the regional
23 center in response to the rejection of their program design proposal. In this letter,
24 dated January 23, 2007, Plaintiff Wolf asserted on behalf of AFA that "All
25 documents that I submitted to you regarding the film program are copy written by
26 me [Wolf] and registered with the U.S. State Department," that "Mr. Travolta broke
27 his fiduciary duty when he continued to have conversations with Lanterman
28 Regional Center about our program for his own personal gain," that after Mr.

1 Travolta left AFA “any further conversations regarding this program should have
2 ceased,” asserting that by law “any and all concepts, programs and services which
3 are developed under a public charity belong to the charity” and that a “board
4 member may not take an idea, concept, program, or service for personal gain.” SUF
5 16.

6 Eventually, Plaintiffs met with regional center representatives in person and
7 agreed to withdraw their appeal and instead submit a different 2-year vocational
8 program that would include film, television, and animation vocational training. SUF
9 17. Wolf has admitted that at the time, despite claiming to have received
10 reassurances that the program service design was not copied, she still believed that
11 Travolta was harming Plaintiffs by taking their opportunities and ideas and
12 breaching fiduciary duties to them. SUF 18.

13 Despite their awareness of this alleged wrongdoing and harm to Plaintiffs in
14 2006 and 2007, Wolf waited until February 6, 2014, to finally file a five page
15 complaint for copyright infringement against Defendant Joseph Travolta. SUF 18-
16 19. State law claims connected to the alleged infringement were added months
17 later, and AFA was finally added as a plaintiff in 2015. SUF 20. Nos. Plaintiffs’
18 current claims are based on allegations of (1) Infringement of a work registered in
19 2006; (2) Infringement of a work registered in 2015; (3) Unfair Competition based
20 on the alleged infringement and exploitation of the works and unspecified trade
21 secrets; (4) Interference with Economic Relationships based on the same alleged
22 infringement and exploitation of the works and unspecified trade secrets; (5) Breach
23 of Fiduciary Duty (by Travolta) for his taking of business opportunities that
24 allegedly belonged to AFA and his use of knowledge gained while on the board of
25 directors of AFA in competition with Plaintiffs; (6) Misappropriation of Trade
26 Secrets held by Plaintiffs at the time that Travolta left his association with AFA; and
27 (7) Conversion of money, physical property, and/or ideas allegedly belonging to
28 Plaintiffs at the time that Travolta left his association with AFA. SUF 21-27

1 B. Wolf's Copying of Third Party Material into the Works.

2 Wolf also claims that all of the words within her registered works are entirely
3 her own words, save for items previously used for Plaintiff's acting class program
4 design and inspiration from Title 17 regulations and the DSM psychiatric manual.
5 However, during the time the program materials were being put into writing in
6 2006, Travolta's wife observed Wolf at Travolta's office, "cutting and pasting" from
7 sources on the internet as part of Wolf's typing of the program service design
8 materials for Travolta's filmmaking program. SUF 29. Now years later,
9 Defendants have been able to locate some documents predating the registered
10 works' dates and additional documents predating the first internet publication of
11 allegedly infringing works by Defendants (in 2011). SUF 30. These documents all
12 share verbatim language with significant portions of the works.

13 1. The Work Registered in 2006.

14 Wolf's registration of the work underlying her first claim for copyright
15 infringement occurred in August 2006. SUF 10. Wolf claims this work, carrying a
16 face date of May 10, 2006, was the first submission for the vocational filmmaking
17 program service design made to the Lanterman Center. The work itself is comprised
18 of a title page and three pages of administrative details about the program, providing
19 short paragraphs on the topics of (1) a Mission Statement; (2) Entrance Criteria; (3)
20 a Referral Process; (4) Exit Criteria; (5) Participation Limits; and (6) Outcomes.
21 SUF 31.

22 First, each of these topics (except the mission statement) were a direct
23 response to a list of elements and a brief description of the required information
24 "needed to complete the service design" provided by the Lanterman Regional
25 Center in a letter written to Travolta and AFA in April 2006. SUF 32. Second,
26 substantial portions of the language are verbatim copies of other documents
27 uncovered by Defendants during this litigation, such that it is inescapable, and
28

1 reasonable minds cannot differ, that the work is not substantially Wolf's own
2 writing.

3 The 2006 Registered Work's "Referral Process" section's first paragraph and
4 list of 5 elements copies 87.5% of its 247 words verbatim from a July 18, 2005, PDF
5 document created by the TTUHSC Student Services Program regarding ADA
6 Compliance for Students with Disabilities. SUF 33. The remaining paragraph of
7 that section copies 36 of its 81 words from the screening section of an employment
8 opportunity flyer published by the College of the Siskiyous on March 8, 2006. SUF
9 34.

10 The 2006 Registered Work's "Outcomes" section also shares large blocks of
11 verbatim language with a course description published on the web by the London
12 Film Academy, including verbatim language from that sections' opening paragraph
13 that does not appear in Defendants' Program Service Design that was published to
14 the internet. SUF 35.

15 2. The Work Registered in 2015.

16 Wolf's registration of the work underlying her second claim for copyright
17 infringement occurred on June 18, 2015, during this litigation. Wolf claims this
18 work, carrying a face date of September 5, 2006, was the second and final
19 submission of Plaintiffs to the Lanterman Regional Center for vendorization of a
20 practical filmmaking program. In this document, the section labeled Weeks 1-4,
21 Term 1 used material from the VFS Vancouver Film School website. SUF 36. The
22 section labeled Weeks 5-10, Term 2 and Weeks I 1-18, Term 3 used material from
23 the Columbia College Hollywood, Production Course. SUF 37. The section Weeks
24 19- 24, Term 4 used material from the Editing section of New York Film Academy
25 s website. SUF 38.

26 The Curriculum Section of Wolf s second Work are also directly copied from
27 various online materials. An excerpt from the "Writing" section appears on both the
28 Film & Digital Hands-On Workshops and in the Total Immersion Classes section.

1 Excerpts from the “Directing,” “Camera and Lighting,” “Production,” “Editing,”
2 and “Sound Design” sections also appear in the Film & Digital Hands-On
3 Workshops materials from the New York Film Academy’s Workshop and One-Year
4 Filmmaking Class sections of their brochure.

5 Based on the still-existing evidence of verbatim copying within the two
6 documents, along with Wolf’s vehement denial of any copying from third party
7 sources, it is impossible to escape the conclusion that the registered works were not
8 original to Wolf.

9 **III. Legal Standard.**

10 Summary judgment against a party is appropriate when the pleadings,
11 depositions, answers to interrogatories, and admissions on file, together with the
12 affidavits, if any, show that there is no genuine issue as to any material fact and that
13 the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c).
14 A party seeking summary judgment bears the initial burden of informing the court
15 of the basis for its motion and of identifying those portions of the pleadings and
16 discovery responses which demonstrate the absence of a genuine issue of material
17 fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d
18 265 (1986). A “genuine issue” exists if there is a sufficient evidentiary basis on
19 which a reasonable jury could find for the non-moving party. *See Anderson v.*
20 *Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A
21 factual dispute is “material” if it might affect the outcome of the suit under
22 governing law. *Id.* at 248.

23 Once the movant has sustained the initial burden, the non-movant “must set
24 forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477
25 U.S. at 250, 106 S.Ct. 2505. Under Rule 56, the non-moving party opposing a
26 summary judgment motion must make a showing “sufficient to establish the
27 existence of an element essential to [his] case, and on which [he] will bear the
28 burden of proof at trial ... since a complete failure of proof concerning an essential

1 element of [his] case necessarily renders all other facts immaterial.” *Celotex*, 477
2 U.S. at 322–23.

3 When the non-movant bears the burden of proof at trial, the court evaluates
4 “the evidence presented through the prism of the substantive evidentiary burden.”
5 *Anderson*, 477 U.S. at 254, 106 S.Ct. 2505. The court determines whether there is a
6 triable issue of fact in light of the “actual quantum and quality of proof” the non-
7 movant must meet at trial. *Id.* Rule 56 does not require “that the moving party
8 support its motion with affidavits or other similar materials negating the opponent's
9 claim.” *Celotex Corp.*, 477 U.S. at 323, 106 S.Ct. 2548. Conclusory, speculative
10 testimony is insufficient to raise genuine issues of material fact and defeat summary
11 judgment. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir.2007).

12 **IV. Argument.**

13 A. Statutes of Limitations.

14 In California, a “plaintiff must bring a claim within the limitations period
15 after accrual of the cause of action.” *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th
16 797, 806 (2005) (citing Cal. Code Civ. Proc., § 312). “Generally speaking, a cause
17 of action accrues at the time when the cause of action is complete with all of its
18 elements.” *Id.* (citations omitted). An “exception to the general rule of accrual is
19 the “discovery rule,” which postpones accrual of a cause of action until the plaintiff
20 discovers, or has reason to discover, the cause of action.” *Id.* at 807 (citations
21 omitted). “Under the discovery rule, suspicion of one or more of the elements of a
22 cause of action, coupled with knowledge of any remaining elements, will generally
23 trigger the statute of limitations period.” *Id.* (citations omitted). The elements
24 evaluated are “the ‘generic’ elements of wrongdoing, causation, and harm,” such
25 that a plaintiff need not “suspect facts supporting each specific legal element of a
26 particular cause of action,” but instead “have reason to at least suspect that a type of
27 wrongdoing has injured them.” *Id.* The rule is designed to avoid dilatory tactics-
28 “plaintiffs are required to conduct a reasonable investigation after becoming aware

1 of an injury, and are charged with knowledge of the information that would have
2 been revealed by such an investigation.” *Id.* at 808.

3 In evaluating a cause of action, where the “complaint shows on its face that
4 [the] claim would be barred without the benefit of the discovery rule,” the plaintiff
5 must meet its burden to “show diligence” by presenting facts that “show (1) the time
6 and manner of discovery *and* (2) the inability to have made earlier discovery despite
7 reasonable diligence.” *Ethicon*, 35 Cal. 4th at 808.

8 Plaintiffs’ individual claims are subject to the following statutes of limitation:

9 Copyright. Actions on copyright claims must be commenced within 3 years
10 after the claim accrued. 17 USC § 507(b).

11 Unfair Competition under Cal. Bus. & Prof. Code § 17200 et seq. The statute
12 of limitations for actions brought under § 17200 is “four years after the cause of
13 action accrued.” Cal. Bus. & Prof. C. § 17208. However, where the underlying
14 conduct is subject to its own statute of limitations, a plaintiff may not use the four
15 year statute to extend federal statutes of limitation. *Newsom v. Countrywide Home*
16 *Loans, Inc.*, 714 F.Supp.2d 1000, 1014 (ND Cal. 2010) (*citing Silvas v. E*Trade*
17 *Mortg. Corp.* 514 F3d 1001, 1007, fn. 3 (9th Cir. 2008)).

18 Interference with Economic Relationship. An action for tortious interference
19 with economic relations is governed by California Code of Civil Procedure section
20 339 (1) 2-year statute of limitations for an “obligation or liability not founded upon
21 an instrument of writing.” *See Knoell v. Petrovich*, 76 CA4th 164, 168, 90 CR2d
22 162, 164 (1999) (causes of action for interference with contractual relations and
23 interference with prospective business advantage); *McFaddin v. H. S. Crocker Co.*,
24 *Inc.*, 219 CA2d 585, 591, 33 CR 389, 393 (1963) (tortious interference with
25 plaintiff's greeting card business); *Edwards v. Fresno Comm. Hosp.* (1974) 38 CA3d
26 702, 706, 113 CR 579, 581-582—physician's action against hospital for wrongful
27 curtailment of hospital facilities.

1 Breach of Fiduciary Duty. An ordinary action for breach of fiduciary duty is
2 governed by California Code of Civil Procedure section 343 “catch-all” statute of
3 limitations. *Stalberg v. Western Title Ins. Co.*, 230 Cal. App. 3d 1223, 1230 (1991);
4 *Hatch v. Collins*, 225 Cal. App. 3d 1104, 1111(1990); *David Welch Co. v. Erskine*
5 *& Tulley*, 203 Cal. App. 3d 884, 893 (1988) (4-year limitations period applied to
6 action by former client against attorneys for using confidential information to divert
7 former client's business to themselves after the attorney-client relationship ended);
8 *Thomson v. Canyon*, 198 CA4th 594, 606 (2011).

9 Misappropriation Of Trade Secrets. Under the Uniform Trade Secrets Act an
10 action against the misappropriator of a trade secret must be commenced within 3
11 years after the misappropriation is, or by the exercise of reasonable diligence should
12 have been, discovered. Cal. Civil Code § 3426.6; *see Glue-Fold, Inc. v. Slautterback*
13 *Corp.*, 82 Cal App. 4th 1018, 1024 (2000) (actual discovery of alleged
14 misappropriation commenced Uniform Trade Secrets Act's 3-year limitations
15 period). The statute expressly provides that “(f)or the purposes of this section, a
16 continuing misappropriation constitutes a single claim.” Cal. Civil Code § 3426.6.
17 Thus, “a plaintiff's claim for misappropriation of a trade secret against a defendant
18 arises only once, when the trade secret is initially misappropriated, and each
19 subsequent use or disclosure of the secret augments the initial claim rather than
20 arises as a separate claim.” *Cadence Design Systems, Inc. v. Avanti Corp.*, 29 Cal.
21 4th 215, 227 (2002). It also means that if plaintiff delays filing suit after discovery
22 of the initial misappropriation, any action against the same defendant for further
23 disclosures or misuse of the trade secret may be time barred. *Glue-Fold, Inc.*, 82
24 Cal. App. 4th at 1027.

25 Conversion. An action for “taking, detaining or injuring any goods or
26 chattels,” including actions for specific recovery of personal property (“claim and
27 delivery”), must be commenced within 3 years. Cal. Code of Civil Procedure §
28 338(c); *see Wisper Corp. N.V. v. California Commerce Bank*, 49 CA4th 948, 957

(1996); *Coy v. County of Los Angeles*, 235 CA3d 1077, 1087 (1991); *Strasberg v. Odyssey Group, Inc.*, 51 CA4th 906, 915-916 (1996). The statute of limitations on a conversion claim generally runs from the date of taking (or other act of conversion) even if plaintiff is unaware of the taking. *See AmerUS Life Ins. Co. v. Bank of America, N.A.*, 143 Cal. App. 4th 631, 639 (2006); *Bono v. Clark*, 103 Cal. App. 4th 1409, 1433 (2002). Actions for intentional or negligent injury to intangible interests are governed by CCP § 339(1)'s 2-year statute of limitations for an “obligation or liability not founded upon an instrument of writing.” [*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 C3d 176, 182, 98 CR 837, 840].

1. Any Damages Under Wolf’s Copyright Claim are Limited to the
3 Years Prior to Filing.

The Copyright Act's statute of limitations provides: “No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.” 17 U.S.C. § 507(b). A claim for copyright infringement “accrues when one has knowledge of *788 a violation or is chargeable with such knowledge.” *Roley v. New World Pictures, Ltd.*, 19 F.3d 479, 481 (9th Cir.1994). Actual or constructive knowledge of facts giving rise to the alleged infringement is sufficient; knowledge of the legal theory is not required. *See Gutierrez v. Mofid*, 39 Cal.3d 892, 897–98, 218 Cal.Rptr. 313, 705 P.2d 886 (1985) (“[T]he uniform California rule is that a limitations period dependent on discovery of the cause of action begins to run no later than the time the plaintiff learns, or should have learned, the *facts* essential to his claim,” and therefore “[i]t is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action”) (emphasis in original).

A defendant is only liable for “his acts of infringement committed within three years prior to [a plaintiff's] lawsuit.” *Makedwde Publ'g Co. v. Johnson*, 37 F.3d 180, 181 (5th Cir.1994) (“We are persuaded by the Ninth, Sixth, and Second Circuits' interpretation of section 507(b). [A defendant] is only liable for *his* acts of

1 infringement committed within three years prior to [a plaintiff's] lawsuit.”)
2 (emphasis in original); *see Roley*, 19 F.3d at 481–82. Accordingly, recovery “is
3 allowed only for those acts occurring within three years of suit and is disallowed for
4 earlier infringing acts.” *Stone v. Williams*, 970 F.2d 1043, 1049–50 (2d Cir.1992).

5 Here, as early as 2006, Plaintiff Wolf (the only owner of the copyrights at
6 issue) was aware of harm she suffered due to Defendant Travolta’s copying of her
7 ideas, knew that he had a computer with copies of her works, and that he was
8 creating a “program identical” to the one she submitted to the Lanterman Regional
9 Center. Wolf sought legal advice on the copying of “her” program, asserted to the
10 Lanterman Regional Center that the documents she had submitted were copy written
11 and registered with the US Government. Clearly, Wolf not only had reason to
12 believe that Travolta had harmed her, but specifically believed that he had done so
13 by copying the works she claims. As such, any and all claims for copyright
14 infringement or resulting damages occurring more than three years before the date
15 of filing of the suit cannot survive the statute of limitation.

16 2. Plaintiffs’ State Law Claims are all in Violation of the
17 Applicable Statutes of Limitation.

18 Unlike the Copyright Statute, each of Plaintiffs’ state law claims are based on
19 violations that occurred no later than 2006 and 2007 in the wake of Travolta’s
20 resignation from Actors for Autism.

21 The only economic relationship that Plaintiffs have provided any evidence
22 that Defendants interfered with is the original vendorization of the filmmaking
23 program with the Lanterman Regional Center, which occurred in 2006 and 2007.
24 Plaintiffs knew of and complained to the Regional Center of Travolta’s
25 vendorization in 2007, and resolved this issue by agreeing to submit a similar two
26 year program that included other media program, which was subsequently
27 vendorized. Because Plaintiffs clearly knew of the alleged wrongdoing - the
28 usurpation of an economic opportunity with Lanterman, as well as the harm - the

1 loss of Plaintiffs' ability to vendorize the same program, as early as December 2006,
2 these claims are subject to the statute of limitations and judgment should enter in
3 Defendants' favor.

4 Plaintiffs' Trade Secrets claim is based on secrets that Travolta allegedly had
5 access to as a board member of Actors for Autism. It is undisputed that Travolta left
6 Actors for Autism in 2006, and there is no factual basis presented by Plaintiff that he
7 had access to any alleged trade secrets after that time. Because a trade secret claim
8 accrues at the time of the alleged misappropriation, and Plaintiffs knew that Travolta
9 was proceeding to vendorize with the Lanterman Center in 2006, the claim accrued
10 then and is now barred by the statute of limitations.

11 Plaintiffs' Unfair Competition claim is based on the alleged infringement and
12 exploitation of the works and the alleged (and unspecified) trade secrets. Because
13 the trade secret claim is time barred, the only potential grounds for the claim is the
14 alleged infringement of the works. To the extent that the claim is not preempted by
15 the infringement claim, the only alleged copying of the works occurred no later than
16 2007, and the claim is time barred.

17 Plaintiffs' Breach of Fiduciary Duty against Travolta for his taking of
18 business opportunities that allegedly belonged to AFA and his use of knowledge
19 gained while on the board of directors of AFA is entirely predicated on allegedly
20 wrongful acts that occurred in 2006 - the alleged taking of Plaintiffs' knowledge to
21 usurp the vendorization opportunity with the Lanterman Regional Center.
22 Travolta's fiduciary duty to AFA ended on his resignation from the organization,
23 and he could not misuse any information gained after that point. The claim is more
24 than barred by even the four year statute of limitations.

25 Plaintiffs' unclear conversion claim is possibly directed at money, physical
26 property, and/or ideas allegedly belonging to Plaintiffs at the time that Travolta left
27 his association with AFA. Plaintiffs admit they were aware all such items were
28 taken in 2006. Thus, this claim is barred by the statute of limitations.

1 *B. Lack of Originality.*

2 As set forth above, the Works Registered by Plaintiff Wolf show substantial
3 copying of third party works, despite her adamant denial of using the third party
4 sources to generate them.

5 Copyright protection extends only to “original works of authorship.” 17
6 U.S.C. § 102. “Although the amount of creative input by the author required to meet
7 the originality standard is low, it is not negligible.” *Satava v. Lowry*, 323 F.3d 805,
8 810 (9th Cir.2003). “[A] combination of unprotectable elements is eligible for
9 copyright protection only if those elements are numerous enough and their selection
10 and arrangement original enough that their combination constitutes an original work
11 of authorship.” *Id.* at 811.

12 The presumption of the validity of a registered copyright may be overcome by
13 the “offer [of] some evidence or proof to dispute or deny the plaintiff's prima facie
14 case of infringement.” *Entm't Research Group, Inc. v. Genesis Creative Group, Inc.*,
15 122 F.3d 1211, 1217 (9th Cir.1997). “[T]he statutory presumption of validity can be
16 rebutted if the alleged infringer demonstrates that the plaintiff's work ‘is not original
17 but copied from another's work.’ ” *Id.* at 1218 (quoting *N. Coast Indus. v. Jason*
18 *Maxwell, Inc.*, 972 F.2d 1031, 1033 (9th Cir.1992)). “Originality is the
19 indispensable prerequisite for copyrightability.” *N. Coast Indus.*, 972 F.2d at 1033. “
20 ‘Original in reference to a copyright work means that the particular work owes its
21 origin to the author. No large measure of novelty is required.’ ” *Id.* (quoting *Alfred*
22 *Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99, 102–03 (2d Cir.1951) (quotation
23 marks omitted)). “When a work displays a significant element of compilation, that
24 element is [protectable] even though the individual components of the work may not
25 be, for originality may be found in taking the commonplace and making it into a
26 new combination or arrangement.” *United States v. Hamilton*, 583 F.2d 448, 451
27 (9th Cir.1978) (citations omitted).

1 “The copyright in a compilation or derivative work extends only to the
2 material contributed by the author of such work, as distinguished from the
3 preexisting material employed in the work....” 17 U.S.C. § 103(b); *accord Entm't*
4 *Research Group*, 122 F.3d at 1220; *see also Lamps Plus, Inc. v. Seattle Lighting*
5 *Fixture Co.*, 345 F.3d 1140, 1145-46 (9th Cir. 2003) (combination of four
6 preexisting pieces into lamp did not create original work).

7 Even if a work can be copyrighted as a compilation, the “copyright protection
8 for a derivative work ‘does not extend to any part of the work in which such
9 [preexisting] material has been used unlawfully’.” *U.S. Auto Parts Network, Inc. v.*
10 *Parts Geek, LLC*, 692 F.3d 1009, 1016 (9th Cir. 2012) (citing 15 U.S.C. § 103(a)).
11 “Thus, if a third party uses preexisting work in violation of the Copyright Act, the
12 resulting derivative work is not entitled to copyright protection. In short, § 103
13 provides that a derivative author may own the copyright in material the author
14 contributed to a preexisting work, but not in infringing material or material the
15 author did not create.” *Id.*

16 Furthermore, where a preexisting work “pervades the derivative work,”
17 claimed by a plaintiff and the “Plaintiff used the previous work without
18 authorization, no copyright protection is afforded” to any remaining elements of the
19 plaintiff’s derivative work. *Sobhani v. @Radical.Media Inc.*, 257 F. Supp. 2d 1234,
20 1239-41 (C.D. Cal. 2003) (no infringement of “spec” Jack in the Box commercial
21 that incorporated portions of preexisting commercials) (citing *Pickett v. Prince*, 207
22 F.3d 402 (7th Cir.2000); *Eden Toys, Inc. v. Florelee Undergarment Co.*, 697 F.2d
23 27, 34 n. 6 (2d Cir.1982); 1–3 Nimmer on Copyright § 3.06 (2002) (“copyright
24 protection does not extend “to derivative works if the pre-existing work *tends to*
25 *pervade* the entire derivative work.”)).

26 As described in section II.B above, Plaintiff’s Registered Works are replete
27 with and pervaded by wholesale verbatim copying of pre-existing works created by
28 third parties. Plaintiff has specifically denied any copying of such works, such that

1 there is no evidence that the copying was authorized. Even with the passage of
2 time, Defendants have been able to uncover paragraphs comprising majorities of the
3 works are derived from third parties. As a result of the unauthorized derivative
4 nature of Plaintiff's works, their content is not original to her, she cannot receive
5 copyright protection, and therefore the works cannot support any infringement
6 claims against Defendants.

7 **V. Conclusion.**

8 For the foregoing reasons, the Court should grant Defendants' Motion and
9 Grant Summary Judgment by finding each of the state law claims barred by the
10 applicable statutes of limitation, the copyright claims subject to a statute of
11 limitations cutoff of 3 years prior to filing this action, and by finding that Plaintiff's
12 Registered Works are unauthorized derivative works that lack sufficient originality
13 to support a copyright or infringement claim.

14
15
16
17 Dated: December 11, 2015

Respectfully submitted,

RAINES FELDMAN LLP

18
19
20
21 By: 

22 JOHN S. CHA
23 STEVEN T. GEBELIN
24 Attorneys for Defendants JOSEPH
25 "JOEY" TRAVOLTA, d/b/a
26 INCLUSION FILMS, INCLUSION
27 WEAR, LLC, and LITTLE
28 DOCUMENTARY FILMS, LLC